

HOUSE BILL NO. 765

INTRODUCED BY A. OLSON

1  
2  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN ELECTION FOR CERTAIN LEGISLATORS  
5 REGARDING CONTINUING PARTICIPATION ALLOWING A LEGISLATOR TO CONTINUE ACTIVE  
6 MEMBERSHIP IN A THE PUBLIC RETIREMENT SYSTEM OF WHICH THE LEGISLATOR IS A MEMBER;  
7 AMENDING SECTION SECTIONS 5-2-304 AND 19-3-412, MCA; AND PROVIDING AN IMMEDIATE  
8 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 ~~NEW SECTION. Section 1. Extended election-- participation in public retirement systems. (1)(a) A~~  
13 ~~legislator who elected prior to [the effective date of this act] to continue participation in a public retirement system~~  
14 ~~under 5-2-304 is eligible to revoke the election by notifying the board that the legislator is revoking the legislator's~~  
15 ~~previous election under 5-2-304. The notification must:~~

- 16 ~~—— (i) be made in writing;~~
- 17 ~~—— (ii) contain the legislator's full name, address, and social security number;~~
- 18 ~~—— (iii) be signed by the legislator;~~
- 19 ~~—— (iv) be notarized; and~~
- 20 ~~—— (v) be submitted to the board prior to July 1, 2007.~~

21 ~~—— (b) Upon receipt of written notification submitted by a legislator pursuant to subsection (1)(a), the board~~  
22 ~~shall:~~

- 23 ~~—— (i) immediately terminate the legislator's continuing membership previously elected pursuant to 5-2-304;~~
- 24 ~~—— (ii) confirm to the legislator that the board received the written revocation; and~~
- 25 ~~—— (iii) provide the legislator with information about the effects of the revocation, including options the~~  
26 ~~legislator may have regarding the commencement of retirement benefits.~~
- 27 ~~—— (c) An election made under this section is an irrevocable election.~~

28 ~~—— (2) A legislator who revokes the legislator's previous election pursuant to subsection (1) must be credited~~  
29 ~~with service credit for the time earned while continuing membership in a public retirement system under the~~  
30 ~~legislator's original election.~~



1 ~~———(3) A legislator's election to continue participating in a public retirement system under 5-2-304 remains~~  
 2 ~~valid unless the legislator revokes the original election as provided in subsection (1).~~

3 ~~———(4) The decision of a member who elected not to participate under 5-2-304 may not be revoked under~~  
 4 ~~this section.~~

5 ~~———(5) The board may adopt rules to implement this section. However, the board shall accept as valid a~~  
 6 ~~written revocation submitted pursuant to subsection (1).~~

7

8 ~~———~~ **Section 2.** Section 5-2-304, MCA, is amended to read:

9 ~~———"5-2-304. Continued participation in public retirement systems. (1) The purpose of this section is~~  
 10 ~~to provide a means whereby persons serving in the Montana legislature may continue their participation in public~~  
 11 ~~retirement systems governed by state law. This section is not intended to provide duplicate credit for the same~~  
 12 ~~service in two retirement systems supported wholly or in part by public funds. This section does not affect~~  
 13 ~~contribution rates or benefit payments specifically provided for in the laws governing the operation of individual~~  
 14 ~~retirement systems.~~

15 ~~———(2) A person who is engaged in official duties as a member of the Montana legislature and who is a~~  
 16 ~~member of a public retirement system governed by state law may, but is not required to, continue the person's~~  
 17 ~~participation in that public retirement system while engaged in official duties as a legislator. To continue~~  
 18 ~~participation in the public retirement system, a legislator shall, within 180 days of taking office and in a manner~~  
 19 ~~prescribed by the appropriate board, file an irrevocable written election with the teachers' retirement board or the~~  
 20 ~~public employees' retirement board. The written election is irrevocable except as provided in [section 1].~~

21 ~~———(3) A legislator who elects to continue participation as provided in subsection (2) shall continue the~~  
 22 ~~payments into the fund of the retirement system at the rate currently in effect in the system based on the~~  
 23 ~~legislator's monthly salary as a member of that system.~~

24 ~~———(4) The state contribution must be made by legislative appropriation. It must equal the appropriate~~  
 25 ~~employer contribution at the rate currently in effect in the system."~~

26

27 ~~———~~ **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
 28 ~~integral part of Title 5, chapter 2, part 3, and the provisions of Title 5, chapter 2, part 3, apply to [section 1].~~

29

30 **SECTION 1. SECTION 5-2-304, MCA, IS AMENDED TO READ:**

1           **"5-2-304. Continued participation Participation in public retirement systems.** (1) The purpose of  
 2 this section is to ~~provide a means whereby persons serving in~~ allow a person who is elected or appointed to the  
 3 Montana legislature may and who is also a member of a retirement system provided for in Title 19, chapter 3, 5,  
 4 6, 7, 8, 9, 13, 20, or 21, by virtue of the person's nonlegislative employment, to continue their the person's  
 5 participation in the public retirement systems governed by state law system of which the person is a member.

6           (2) This section is not intended to provide duplicate credit for the same service in two retirement systems  
 7 supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments  
 8 specifically provided for in the laws governing the operation of individual retirement systems.

9           (3) (a) A person who is an inactive or retired member of a retirement system provided for in Title 19,  
 10 chapter 5, 6, 7, 8, 9, 13, 20, or 21, and who is elected or appointed to be a legislator may:

11           (i) return to active membership in the system of which the person is an inactive or retired member under  
 12 the requirements of that system; or

13           (ii) remain an inactive or retired member of the retirement system and become an active member of the  
 14 public employees' retirement system pursuant to 19-3-412.

15           (b) A person who is an inactive or retired member of the public employees' retirement system provided  
 16 for in Title 19, chapter 3, and who is elected or appointed to the legislature may return to active membership in  
 17 the public employees' retirement system but cannot simultaneously be an inactive or retired member of the  
 18 system as a result of prior covered terminated employment and an active member of the retirement system under  
 19 19-3-412 or this section.

20           ~~(2)(4)~~ (a) A person who is engaged in official duties as a member of the Montana legislature and who  
 21 is a an active member of a public retirement system governed by state law and who is elected or appointed to  
 22 be a legislator may, but is not required to, continue the person's participation in that public retirement system  
 23 while engaged in official duties as a legislator.

24           (b) To continue participation as an active member in the public retirement system, a legislator shall,  
 25 within 180 days of taking office and in a manner prescribed by the appropriate board, file an irrevocable written  
 26 election with the teachers' retirement board or the public employees' retirement board.

27           ~~(3)(5)~~ (5) A legislator who elects to continue participation as an active member as provided in subsection  
 28 ~~(2) (4)~~ shall continue the payments into the fund of the retirement system at the rate currently in effect in the  
 29 system based on the legislator's monthly salary as a member of that system.

30           ~~(4)(6)~~ (6) The state contribution must be made by legislative appropriation. It must equal the appropriate

1 employer contribution at the rate currently in effect in the system."

2

3 **SECTION 2. SECTION 19-3-412, MCA, IS AMENDED TO READ:**

4 **"19-3-412. Optional membership.** (1) Except as provided in 5-2-304 and subsection (2) of this section,  
5 the following employees and elected officials in covered positions shall elect either to become active members  
6 of the retirement system or to decline this optional membership by filing an irrevocable, written application with  
7 the board in the manner prescribed in subsection (3):

8 (a) elected officials of the state or local governments who:

9 (i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

10 (ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the  
11 defined contribution plan at the time of their election;

12 (b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered  
13 employment with all employers under this chapter in any fiscal year;

14 (c) employees directly appointed by the governor;

15 (d) employees working 6 months or less for the legislative branch to perform work related to the  
16 legislative session;

17 (e) the chief administrative officer of any city or county;

18 (f) employees of county hospitals or rest homes.

19 (2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a)  
20 through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to  
21 file an irrevocable, written application with the board.

22 (b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator  
23 filed an irrevocable written application with the board to become a member and paid the employee share of  
24 contributions determined by the board to be required to purchase the legislator's prior service credit. However,  
25 the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of  
26 membership service, service credit equal to all of the legislator's membership service. The legislative branch is  
27 responsible for paying the amount determined by the board to be the employer's share of contributions required  
28 to purchase a legislator's service credit under this subsection (2)(b).

29 (c) A member who after April 17, 2003, is elected to a local government position in which the member  
30 works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional membership

1 with respect to the member's elected position.

2 (3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1)  
3 and provide written application forms to each employer.

4 (b) Each employee or elected official in a position covered under subsection (1) shall obtain the written  
5 application form from the employer and complete and return it to the board.

6 (c) The written application must be filed with the board within 180 days of the commencement of the  
7 employee's or elected official's employment.

8 (d) The employer shall retain a copy of the employee's or elected official's written application.

9 (4) If the employee or elected official fails to file the written application required under subsection (1) with  
10 the board within the time allowed in subsection (3), the employee or elected official waives membership.

11 (5) An employee or elected official who declines optional membership may not receive membership  
12 service or service credit for the employment for which membership was declined.

13 (6) An employee or elected official who declined optional membership but later becomes a member may  
14 purchase service credit for the period of time beginning with the date of employment in which membership was  
15 declined to the commencement of membership. Purchase of service credit pursuant to this subsection must  
16 comply with 19-3-505.

17 (7) Except as provided in subsection (2)(c), membership in the retirement system is not optional for an  
18 employee or elected official who is already a member. Upon employment in a position for which membership is  
19 optional:

20 (a) a member who was an active member before the employment remains an active member;

21 (b) a member who was an inactive member before the employment becomes an active member; and

22 (c) a member who was a retired member before the employment is subject to part 11 of this chapter.

23 (8) (a) An employee or elected official who declines membership for a position for which membership  
24 is optional may not later become a member while still employed in that position.

25 (b) If, after a break in service of 30 days or more, an employee who was employed in an optional  
26 membership position is reemployed in the same position or is employed in a different position for which  
27 membership is optional, the employee shall again choose or decline membership.

28 (c) If the break in service is less than 30 days, an employee who declined membership is bound by the  
29 employee's original decision to decline membership.

30 (9) An employee accepting a position that requires membership shall become a member even if the

1 employee previously declined membership and did not have a 30-day break in service."

2

3 NEW SECTION. SECTION 3. TRANSITION. (1) A PERSON WHO IS SUBJECT TO THE PROVISIONS OF 5-2-304  
4 WHO MADE AN IRREVOCABLE ELECTION UNDER 5-2-304 AFTER JANUARY 1, 2003, AND BEFORE [THE EFFECTIVE DATE OF  
5 THIS ACT] MAY RESCIND THE ELECTION.

6 (2) A PERSON WHO IS ELIGIBLE UNDER SUBSECTION (1) TO RESCIND AN ELECTION PREVIOUSLY MADE BY THE  
7 PERSON PURSUANT TO 5-2-304 SHALL NOTIFY THE PUBLIC EMPLOYEES' RETIREMENT BOARD IN WRITING PRIOR TO JULY  
8 1, 2007, THAT THE PERSON HAS RESCINDED THE PERSON'S PRIOR ELECTION.

9 (3) A PERSON WHO RESCINDS, UNDER SUBSECTION (2), THE PERSON'S PREVIOUS ELECTION IS:

10 (A) SUBJECT TO THE APPLICABLE OPTIONS AVAILABLE UNDER 5-2-304 AND 19-3-412 AS PROVIDED FOR IN [THIS  
11 ACT]; AND

12 (B) IS ELIGIBLE TO RECEIVE RETROACTIVELY TO JANUARY 1, 2007, THE RETIREMENT BENEFITS FOR WHICH THE  
13 PERSON WOULD HAVE BEEN ELIGIBLE ABSENT THE ORIGINAL ELECTION.

14

15 NEW SECTION. SECTION 4. Effective date. [This act] is effective on passage and approval.

16

17 NEW SECTION. SECTION 5. RETROACTIVE APPLICABILITY. [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE  
18 MEANING OF 1-2-109, TO JANUARY 1, 2003.

19

- END -